

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON DC

SYSCO GRAND RAPIDS, LLC

Respondent,

and

GENERAL TEAMSTERS UNION
LOCAL NO. 406, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

Charging Party.

Cases: 07-CA-146820
07-CA-148609
07-CA-149511
07-CA-152332
07-CA-155882
07-CA-166479
07-RC-147973

REPLY BRIEF IN SUPPORT OF RESPONDENT'S EXCEPTIONS

On May 16, 2016, the General Counsel ("GC") filed his Answering Brief to the Respondent, Sysco Grand Rapids, LLC's ("Sysco") Exceptions styled "Counsel for the General Counsel's Response to Respondent's Exceptions to the Administrative Law Judge's Decision".¹ The Respondent now files its Reply Brief pursuant to §102.46(a).

I. ISSUE

In his brief, the GC argues that the erratum issued by ALJ Michael Rosas on March 9, 2018 was perfectly appropriate to correct "material typographical errors" in his March 2, 2017 decision because the ALJ concluded his decision over a year ago had "inadvertently referenc[ed]" the identity of the Charging Party. As such, the GC recited

¹ The GC argued, by footnote 1, that exceptions to the erratum decision by the ALJ would be untimely as the erratum issued on March 9, 2018. This argument is plainly wrong. Section 102.46(a) only permits the filing of exceptions upon the issuance of an Order Transferring the Proceeding to the NLRB and that Order issued on April 11, 2018. The regulations of the Board do not contemplate exceptions to sporadic and ad hoc ALJ decisions as suggested.

*Wilco Business Forms*² for the proposition that the ALJ had free reign to issue the erratum.

II. ARGUMENT

The exceptions filed by Sysco recited its Motion to Strike the erratum filed with the Board on March 23, 2018. In that motion, the Respondent expressly argued that while an ALJ may issue an erratum to correct a “material typographical error” the ALJ uniformly referred to Local 646, IBT in his Decision, Recommended Order and proposed Notice to Employees. This identification of a party may have been an “inadvertent error” as the Board concluded on April 3, 2018 and as the GC argues in his brief, but it was not a typographical error. It was a profoundly substantive error. The Board recognizes that:

An erratum may not be utilized to add names of discriminatees who were never mentioned in the decision. For those changes, parties ‘should seek correction ... either through exceptions ... or by motions to the Board.’

Bench Book: An NLRB Trial Manual, §15-700 (January 2018) (citing *Wilco*).

In his initial decision in March 2017, the ALJ never mentions Local 406, IBT. Rather, he adds the name of a charging party for the first time in an “erratum” in March 2018. The Board already has recognized that the failure to reference or mention a name is not a typographical error – it is a substantive error and a party must seek correction by exceptions or motions. Here, crucially, the GC failed to file any exceptions to the ALJ’s March 2017 decision and recommended order.

² 280 NLRB 1336 (1986)

III. CONCLUSION

By expanding the scope of permissible errata to this tortured degree, the Board would work an insult to its own precedent and act in contravention of its own regulations. This may not be permitted. The erratum must be rejected.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on this 23rd day of May, 2018, I filed a copy of the **Reply Brief In Support of Respondent's Exceptions** with the Office of the Executive Secretary, National Labor Relations Board using the Board's E-Filing System. I further certify that at the same time, I served a copy of the same on the Counsel for the General Counsel and the Charging Party's counsel of record as follows:

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